

**REMARKS**

Claims 1-9 are currently pending in this application. No claims are being added, canceled or amended. Thus, a listing of the claims is not needed.

In view of the remarks herein, as well as the amendments and remarks filed on February 25, 2008, Applicants respectfully request that the Examiner withdraw all outstanding rejections and allow the currently pending claims.

**Issues Under 35 U.S.C. § 102(b)**

Claims 1 and 3-4 stand rejected under 35 U.S.C. §102 (b) as being anticipated by Ducker et al. (U.S. Patent No. 5,938,649) (hereinafter Ducker '649). Applicants respectfully submit that the remarks filed on February 25, 2008 adequately address this rejection.

**Issues Under 35 U.S.C. § 103(a)**

Claim 2 stands rejected under 35 U.S.C. § 103(a) in view of Ducker '649. Also, claims 5-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ducker '649 in view of Hoshino et al. (U.S. Patent No. 6,685,953) (hereinafter Hoshino '953) and further in view of Ptchelintsev et al. (U.S. Patent No. 5,834,513) (hereinafter Ptchelintsev '513). Applicants respectfully submit that the remarks filed on February 25, 2008 adequately address this rejection. Still, Applicants herein enclose a Declaration pursuant to 37 C.F.R. § 1.132 showing further evidence of patentability for the claimed invention.

Applicants note M.P.E.P. § 2145, which states that rebuttal evidence may include evidence of "secondary considerations," such as "commercial success, long felt but unsolved

needs, [and] failure of others." *Graham v. John Deere Co.*, 383 U.S. at 17, 148 USPQ at 467. See *In re Corkill*, 711 F.2d 1496, 226 USPQ (BNA) 1005 (Fed. Cir. 1985). In this regard, Applicants respectfully submit that unexpected results exist for the present invention (as seen from the attached Rule 132 Declaration), whereby these unexpected results rebut any asserted *prima facie* case of obviousness based on the cited combination of references.

In particular, Applicants respectfully refer the Examiner to the comparative testing in the Rule 132 Declaration wherein an absorbent article corresponding to Ducker '649 was tested (Comparative Example 1). Testing conditions are shown in Table I<sup>1</sup> at pages 3-4 of the Rule 132 Declaration. As can be seen, the present invention (Example 1) has unexpectedly achieved a better and lower rate of diaper rash (reduction of incidences of more than half) versus Comparative Example 1. Further, a higher incidence of 1 out of 5 babies experienced rash when using the comparative absorbent article. Thus, this *Graham* factor weighs in Applicants' favor and the Rule 132 Declaration sufficiently rebuts the Examiner's rejection.

Reconsideration and withdrawal of this rejection are thus respectfully requested.

### Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and objections and that they be withdrawn.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey, Reg. No. 32,881 at

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<sup>1</sup> Applicants note that the Table I on page 9 of the February 25<sup>th</sup> response differs from the Table in the Rule 132 Declaration.

the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees. However, it is believed that no fee is due upon the filing of this supplemental response since the previous response filed on February 25, 2008 is fully responsive to the outstanding Office Action.

Dated: April 10, 2008

Respectfully submitted,

By   
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Attachment: Declaration under 37 C.F.R. § 1.132 (total of 4 pages)